



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

Brian C. Rockensuess
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June 20, 2024

Jacob Titus
Vested Interest, LLC
251 East Sample Street
South Bend, Indiana 46601

Re: **Comfort Letter**
Bona Fide Prospective Purchaser
Ziker Cleaners
251 East Sample Street
South Bend, St. Joseph County
EPA ID #IN000936740
UST FID #7447
LUST #199811514
Brownfield #4230303

Dear Mr. Titus:

In response to the request by Heron Environmental, LLC (Heron) on behalf of Vested Interest, LLC (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 251 East Sample Street, South Bend (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and/or petroleum products found on the Site. This letter does not provide a release from liability but provides specific information with respect to some of the criteria the Owner must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The 2.34-acre Site is one parcel identified by the State by parcel #71-08-12-377-014.000-026. The Site is located in a commercial/industrial section of town and improved with an approximately 70,000-square foot interconnected building. The building was built in sections with the oldest two-story section on the northern part of the Site dating back to 1880s, the western single-story section being built in 1920s-1930s, and the newest, southwestern portion (a large open warehouse/manufacturing space) being built in 1993.

Historically, Ziker Cleaners began dry cleaning and laundry services in the southeastern portion of the building circa 1930s and gradually expanded operations to encompass the entire Site. Ziker ceased operations on-Site in 2016. The Site has been developed since at least the 1880s with manufacturing operations including machine shops, metal plating, and woodworking from at least 1880s to the 1960s. Auto wrecking and salvage operations were conducted on the southwestern portion of the Site property from at least the 1940s through the 1980s. There were also several residential structures on the southern and eastern portions of the Site from at least the 1880s to the 1960s. Vested Interest, LLC took title to the Site on March 6, 2023,¹ and since that time the Site has been used for multi-tenant commercial operations, miscellaneous individual offices and artist suites, and a personal trainer/fitness studio. Current commercial and light manufacturing uses of the Site are expected to continue.

The Site is bounded to the north, by Tutt Street followed by commercial properties; to the east, by Carroll Street followed by commercial properties and then by Fellows Street; to the south, by East Sample Street followed by Ivy Tech Community College; and, to the west, by commercial and industrial facilities.²

The Site is located in a designated Opportunity Zone which allows for preferential tax treatment of eligible investments designed to spur economic development and job creation in distressed communities.

Due Diligence

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* dated June 6, 2022 (June 2022 Phase I ESA) prepared for Tutt Street LLC by Heron (IDEM Virtual File Cabinet (VFC) Document #83451765) and a *Phase I Environmental Site Assessment Update* dated February 27, 2023 (February 2023 Update) (Document #83451766). On February 27, 2023, the Owner obtained a letter from Heron Environmental, LLC allowing it to rely on the Phase I ESA and the February 2023 Update was prepared for Vested Interest, LLC. The June 2022 Phase I ESA and February 2023 Update were conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-21, Standard Practice for Environmental Site Assessment, which satisfies the federal “All Appropriate Inquiries” (AAI) rule set forth in 40 CFR Part 312. In an effort for the Owner to qualify as a BFPP, Jacob Titus, Partner with Vested Interest, LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

¹ A Deed of Correction (Instrument # 2023-16473) was executed on April 27, 2023 (recorded on July 21, 2023) to correct the omission in the March 6, 2023, deed (Instrument # 2023-07151) (recorded on April 6, 2023) of the required provision notifying the Owner of the applicability of an environmental restrictive covenant to the Site.

² The Sibley Machine Company, State Cleanup Program site #200411007, adjoins Ziker Cleaners to the west.

The June 2022 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

- The potential for vapor intrusion into overlying commercial buildings related to documented contamination in groundwater underlying the Site and west adjoining property is a REC.

The February 2023 Update identified the following REC associated with the Site:

- The tetrachlorethylene (PCE) identified in sub-slab soil gas samples collected at the Site represents a potential vapor encroachment condition (VEC) to the building and is a REC.

In addition to the above-noted REC, the February 2023 Update identified the following controlled REC (CREC):

- An environmental restrictive covenant was recorded in 2007 on the Site deed to prevent potential exposure contamination.

Pursuant to ASTM E1527-21, *Standard Practice for Environmental Site Assessment*, Heron evaluated the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or groundwater either on or near the Site. Heron identified one potential vapor encroachment condition (VEC) associated with historical operations at the Site (including painting, machining, metal plating, auto salvage, and dry cleaning), the presence of several floor drains and suspected drywells that could act as preferential vapor pathways, and documented groundwater contamination on-Site.

2007 No Further Action Determination and Environmental Restrictions

Historically, there were six steel underground storage tanks (USTs) located at the Site ranging in size from 1,000 to 3,000-gallons. Five of the USTs contained Stoddard solvent and one was a waste oil tank. It is unknown when the USTs were installed but none of them had any leak detection equipment. In November 1998, the USTs were either removed (one 1,000-gallon waste oil UST and two 3,000-gallon Stoddard solvent USTs) or closed in place due to proximity of building foundations (three 1,200-gallon Stoddard solvent tanks) (Document #83451765 (page 880-1015)). In September 2007, after IDEM reviewed the file regarding the release of Stoddard solvent at the Site, it issued a no further action (NFA) determination for incident #199811514 (Document #83451776). No over-excavation was completed, and no soil was removed from the Site. The following conditions were described in the NFA letter:

- Subsurface soil results indicated that the total petroleum hydrocarbons (TPH) are between <10 to 13,900 parts per million (ppm) for Stoddard solvent, which exceeded the then-applicable IDEM closure objective of 100 ppm.³

³ As of July 9, 2012, IDEM no longer evaluates TPH in soil in its reviews or decisions of closure.

- Subsurface soil results indicated that volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) were below then-applicable IDEM closure objectives.
- Groundwater results for the past four quarters detected PCE⁴ above then-applicable IDEM Risk Integration System of Closure (RISC) Technical Resource Guide Document (February 15, 2001 and applicable revisions) residential default closure levels (RDCLs); however, results were below the RISC industrial closure levels (IDCLs). Additionally, detected levels of VOCs including benzene, toluene, ethyl benzene, xylene, and methyl tertiary butyl ether (MTBE) were below the RISC default RDCLs for those four quarters.
- Those areas where the contaminants of concern in soil remained on the Site were termed “Affected Area(s)” and are depicted on Exhibit B on the ERC. A list of the contaminants of concern in soil and/or groundwater and the concentration levels/detected parameters is set forth in Table 1 and 2 of the ERC.

It was then determined that because some contamination remained on-Site, an environmental restrictive covenant (Original ERC) was needed to limit or eliminate exposure to contamination remaining in soil and groundwater. The Original ERC was recorded on July 25, 2007 as Instrument Number 0729157 (Document #83451776, page 4-18) and contained the following restrictions:

- Do not use the Site for residential purposes, including but not limited to daily care facilities.
- Do not use the Site for agricultural purposes.
- Shall neither engage in nor allow the installation or use of drinking water wells on the Site. There shall be no consumptive, extractive, or other use of the groundwater underlying the Site, other than for investigation and/or remediation purposes, without prior IDEM approval.
- Notify IDEM if there is a change in the land use and/or any zoning changes that affect the Site.

Historical Environmental Conditions

Hazardous Waste Generator Status

Ziker Cleaners, Inc. was assigned the US EPA ID #IN0000936740 as early as 2001 for the generation and disposal of hazardous waste. The Site was initially classified as a Small Quantity Generator (SQG) for the disposal of petroleum waste approximately ten times a year. In 2013, Ziker Cleaners’ generator status was changed to a Conditionally Exempt Small Quantity Generator (CESQG).

⁴ PCE was reportedly not used in dry cleaning operations at Ziker’s and as such is potentially attributable to an off-Site source.

Off-Site Historical Environmental Conditions

State Cleanup Program – Sibley Machine

On November 1, 2004, a release of PCE on the off-Site, west-adjacent Sibley Machine property was reported to IDEM (Document #44277096) and assigned incident #200411007 by IDEM's State Cleanup Program. The Sibley Machine property operational history included a machine shop and foundry. In addition, the southwestern portion of the property was occupied by a laundry facility from approximately 1917 to 1966.

In the initial environmental investigation (Document #44221311) following the release report, groundwater flow direction was determined to be toward the northeast. A PCE groundwater plume was identified emanating from the former laundry area of the Sibley Machine property and extending to the northeast. One groundwater sample collected from a monitoring well installed on the Sibley Machine property, immediately adjacent to the northwestern corner of the Site, contained 38 ppb PCE, indicating an impact from the Sibley groundwater plume onto the northwestern part of the Site. Additional investigations showed that PCE contamination extended off the Sibley Machine property to the northeast (and north of the Site). Investigation sampling also detected PCE in groundwater cross-gradient of Sibley and to the south of the Site indicating there may be an additional contributing source(s) of PCE in groundwater.

Corrective action on the Sibley Machine property consisted of two rounds of injections to stimulate anaerobic bioremediation of the PCE groundwater plume using 24,360-lbs of HRC®-A in 2007 and 147,840-lbs of 3D Microemulsion® in 2008, which resulted in reducing a significant mass of the PCE contamination. After quarterly groundwater monitoring, a Mann-Kendall test on groundwater wells documented that the groundwater plume was stable and/or decreasing which was IDEM approved for closure. An ERC was a part of the closure determination for the Sibley Machine property and was recorded on April 22, 2011 (Document #62221781). Because the Original ERC had already been recorded on the deed for the Site, it served to address potential off-site exposure to contamination emanating from the Sibley Machine property as part of the NFA determination. On May 16, 2011, a No Further Action (NFA) letter was Issued for the Sibley Machine property.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents prepared by Heron. These documents may be viewed electronically by searching online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Vapor Intrusion Assessment Report* dated July 19, 2022, (Document #83451773)
- *Site Investigation Report*, dated December 11, 2023, (Document #83569595)

For purposes of this letter, sample analytical results were compared to IDEM's *Risk-based Closure Guide* (R2) (July 8, 2022 and applicable revisions) published levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to R2 residential and commercial soil published levels (RSPLs and CSPLs, respectively); soil samples collected between 0 and 15 feet bgs were compared to the excavation worker soil published levels (XSPLs); and, soil samples collected at depths greater than 15 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to groundwater published levels (GWPLs). Indoor air samples were compared to residential indoor air published levels (RIAPLs) and commercial indoor air published levels (CIAPLs) as well as calculated residential and commercial indoor air action levels (RIAALs and CIAALs, respectively). Subslab soil gas samples were compared to R2 residential subslab published levels (RSSPLs), commercial subslab published level (CSSPLs), and large commercial subslab published levels (LCSSPLs).

Vapor Intrusion Assessment Report – July 2022

On June 21, 2022, a total of 14 sub-slab soil gas (SGss) sampling points (SG-1 through SG-14) were installed within some of the building sections at the Site by drilling a 1.5-inch diameter hole partially through the floor slabs, with an inner 5/8-inch hole drilled completely through the slabs. Vapor pins were then installed in each hole. Each SGss sample was analyzed for VOCs via US EPA Method TO-15. No indoor air samples were collected.

The SGss sampling points SG-1 through SG-5, SG-7 and SG-8 were installed in the tenant spaces in the commercially occupied southeastern portion of the building. Soil gas sampling points were placed at the following locations: SG-6 was installed in the basement of the southeastern portion of the building; SG-9 and SG-10 were installed in the south-central portion of the building (SG-9 was installed in the commercially occupied unit and SG-10 was installed in the unoccupied commercial unit); SG-11 and SG-12 were installed in the unoccupied storage areas in the western portion of the building; and, SG-13 and SG-14 were installed in the far northeastern portion of the building in a commercial center.

According to Heron, the southwestern portion of the building, which is currently occupied by commercial and manufacturing companies, was not sampled due to it being a large, open warehouse/manufacturing space with high ceilings. Additionally, Heron explained the north/northwestern portion of the building was not sampled because the building was constructed over an earthen floor crawl space.

Results of the soil gas sampling activities detected PCE over the R2 commercial published level in soil gas at SG-11 which was installed in an unoccupied storage area in the western portion of the building. Refer to Table 3, below, for a summary of soil gas analytical data above applicable R2 published levels. All other compounds were detected below applicable R2 published levels.

Site Investigation Report – December 2023

In April 2023, a second round of vapor intrusion sampling was conducted at the Site, consisting of the collection of paired indoor air and SGss samples at the previously installed SGss vapor point locations. Samples were collected from the SG-2 through SG-14 locations; SG-1 was inaccessible at the time due to a large cabinet placed over the sample point. Samples were submitted for analysis of VOCs via Method TO-15. No contaminants were detected in indoor air samples above R2 published levels. Soil gas sample results above applicable R2 published levels are on Table 3, below.

In September 2023, a third round of vapor intrusion sampling was conducted at the Site consisting once again of paired indoor air and SGss samples collected at previously installed SGss locations. Samples were collected from SGss points SG-2 through SG-6 and SG-8 through SG-14. Sampling points SG-1 and SG-7 were inaccessible at the time due to large cabinets placed over the sampling points. No contaminants were detected in indoor air samples above R2 published levels. Refer to Table 3, below, for a summary of soil gas analytical data above applicable R2 published levels.

In May 2023, Heron also advanced four soil borings (B-1 through B-4) to a maximum depth of 35 feet bgs in areas of potential contamination. Borings B-1 and B-2 were advanced in the west central portion of the Site near the former storage location of 55-gallon drums of drycleaning solvents (B-1) and the former waste oil UST location (B-2). Borings B-3 and B-4 were advanced in the southeastern portion of the Site near removed/closed in-place Stoddard solvent USTs. Boring B-2 soil samples were submitted for analysis of VOCs, and Resource Conservation and Recovery Act (RCRA) 8 metals. Chromium analysis included speciation for trivalent (Chromium III) and hexavalent (Chromium VI) chromium. Petroleum staining and odor was observed in two borings at a depth of about 7 feet bgs. Analytical results detected no VOCs above R2 published levels. The soil sample from boring (B-2) contained Chromium VI above its CSPL. Low concentrations of PCE at levels above the GWPL were detected in the grab groundwater samples, similar to the concentrations detected during monitoring for the LUST incident #199811514. In addition, although no Chromium VI was detected in groundwater above its laboratory detection limit, the detection limit was above the Chromium VI R2 RSPL; therefore, this data is inconclusive as an actual detected level. Refer to Table 1, below, for a summary of soil, and Table 2, below, for a summary of groundwater analytical data above applicable R2 published levels.

TABLE 1
May 2023 Soil Concentrations Exceeding Applicable IDEM R2 Published Levels

Contaminant Detected	Sample Location	Depth Feet bgs	Results ppm	RSPL	CSPL	XSPL
Chromium VI	B-2	8-10	99	4	60	3000

Notes: **bold** = above R2 Residential Soil Published Level
italics = above R2 Commercial Soil Published Level
 ppm = parts per million bgs = below ground surface

TABLE 2
May 2023 Groundwater Concentrations Exceeding IDEM R2 Published Levels

Contaminant Detected	Sample Location	Results ppb	GWPL
Tetrachloroethylene	B-1	13	5
	B-2	5.9	
	B-3	9.4	
	B-4	12	

Notes: **bold** = above R2 Groundwater Published Level
 ppb = parts per billion

TABLE 3
Subslab Soil Gas Concentrations Exceeding Applicable IDEM R2 Published Levels

Contaminant Detected	Sample ID	Sample Date	Results ug/m ³	RSSPL	CSSPL	LCSSPL
Tetrachloroethylene	SG-4	6/23/22	1,600	1,000	6,000	60,000
		4/11/23	1,600			
		9/20/23	1,000			
	SG-5	6/23/22	1,200			
	SG-11	6/23/22	7,100			
		4/11/23	4,400			
		9/20/23	4,800			
	SG-12	6/23/22	2,800			
		9/20/23	3,700			
	SG-12 Dup	4/11/23	1,900			

Notes: **bold** = above R2 Residential Subslab Published Level
italics = above R2 Commercial Subslab Published Level
 Dup = duplicate
 ug/m³ = micrograms per cubic meter

Technical Summary

A soil sample from soil boring (B-2) contained Chromium VI above its commercial published level at 8-10 feet bgs. This soil contamination may be related to historical plating and bumper chroming operations at the Site. The Original ERC currently applicable to use of the Site does not address potential exposure to soil contamination. Therefore, a replacement ERC (Replacement ERC) is being issued to ensure no direct exposure to the contamination detected in on-Site soil. Given the long industrial history at the Site, the undelineated Chromium VI contamination in soil adjacent to the building, and the presence of floor drains and suspected dry wells, it is possible that additional soil contamination may be present adjacent to and underlying the building.

Grab groundwater samples all contained low concentrations of PCE (5.9 to 13 ppb) above its GWPL, similar to the levels detected during monitoring for the LUST incident #199811514 and during the investigations at the off-Site, west-adjacent Sibley Machine property which is a potential source of the PCE contamination in on Site groundwater.

The vapor intrusion exposure pathway is a concern at the Site and was partially evaluated in the 2023 sampling events conducted in the southeastern, western, and far northeastern building portions. No indoor air samples contained VOCs above applicable R2 RIAPLs. Four SGss samples contained PCE above its R2 RSSPL, but below its R2 CSSPL. The highest level of PCE detected in SGss was collected from the western portion of the building, adjacent to the Sibley Machine property boundary.

Because neither of the 2023 vapor intrusion sampling events were conducted during temperature conditions representing either summer or winter “worst case” scenarios, indoor air samples are recommended to be collected during winter and summer “worst case” conditions because during these times the pressure gradient is greatest between the subsurface and the building interior. Climate data from the South Bend area (available at <https://www.weather.gov/wrh/climate>) noted that the temperature range on April 11, 2023 (the winter “worst case” sampling event), was between 45 and 77°F. The temperature range for the summer “worst case” sampling event on September 20, 2023, was between 57 and 82°F. The September sample may be acceptable as a summer “worst case”, but the low temperature in the evening suggests that the heating, ventilation & air conditioning (HVAC) may not have been running all the time. The temperature range from the April sampling event does not meet any of the “worst case” conditions criteria. Therefore, at least one additional indoor air sampling event should be conducted under winter “worst case” conditions in the southeastern, western, and far northeastern building portions.

In addition, the vapor intrusion exposure pathway has not been investigated at either the southwestern or northern portions of the existing Site building. Heron explained the lack of sampling in the southwestern portion of the Site building was due to the space being a large, enclosed manufacturing space with high ceilings; however, there are R2 published levels for this type of structure. Heron also explained the lack of sampling in the northern-most building was due to the presence of a crawl space. According to the R2, crawl space samples should be collected and compared to indoor air published levels.

Since the Original ERC was recorded, additional investigations were conducted at the Site and additional contaminants and/or areas of contamination have been identified. Therefore, a *Termination of Environmental Restrictive Covenant* is being issued to the Owner in conjunction with issuance of this Comfort Letter and a replacement ERC (Replacement ERC) that accurately reflects current environmental conditions at the Site and the appropriate land use restrictions for those conditions is enclosed.

Historical operations such as metal plating may have caused per- and polyfluoroalkyl substances (PFAS) contamination on the Site. On July 14, 2023, IDEM

issued an interim PFAS announcement updating R2 published levels for several PFAS compounds based on certain toxicity parameters issued by the U.S. EPA. Two PFAS compounds, PFOA and PFOS, have been designated as hazardous substances under CERCLA with an effective date of July 8, 2024. No sampling of soil or groundwater for PFAS has occurred on the Site. As emerging contaminants of concern, it is possible on-Site sampling for PFAS may be required in the future.

Liability Clarification

IDEM's "*Brownfields Program Comfort and Site Status Letters*" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Owner, that:

- (1) no state or federal enforcement action at the Site is pending;
- (2) no federal grant requires an enforcement action at the Site;
- (3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither the Owner nor an agent or employee of the Owner caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site; and,
- (5) the Owner is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Owner has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus, a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective

purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Owner qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Owner even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such an owner for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Owner to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901. Further, pursuant to Indiana Code 13-25-5-1, an Owner's participation in the Indiana Brownfields Program does not affect the applicable closure or corrective action obligations under the Resource Conservation and Recovery Act (RCRA) set forth in 42 U.S.C. 6901, et seq.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Owner acquired the Site on March 6, 2023, after January 11, 2002 and June 30, 2009, and the disposal of hazardous substances and petroleum at the Site occurred prior to that date. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Owner has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Owner has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Owner meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Owner must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Owner must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent

or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Owner recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Owner will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Owner must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

Recommendations

The Program has the following recommendations regarding conditions on the Site:

- If the on-Site building is demolished, efforts should be made to locate and remove the three remaining Stoddard solvent USTs that were closed in place in November 1998. Exposure to any associated soil contamination that may be encountered should be mitigated so that remaining contaminant concentrations do not present a threat to human health or the environment based on applicable R2 published levels.
- Although not confirmed to be present at the Site, the age of the existing building suggests the likely presence of asbestos containing materials (ACM) and lead based paint (LBP). Any ACM and LBP encountered during any renovations or demolition of the existing buildings on the Site should be managed, abated, and disposed of in accordance with all applicable Occupational Health and Safety Administration standards including engineering controls, proper work practices and worker exposure monitoring and applicable Federal, State, and local laws and regulations.
- As identified in the June 2022 Phase I ESA and February 2023 Update, any floor drains that are drywells should be located and properly closed.

Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances and/or petroleum contamination found at the Site to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Execute and record the enclosed *Termination of Environmental Restrictive Covenant*.
- Record the Replacement ERC and implement and maintain the land use restrictions therein.
- If the on-Site building is demolished, undertake an additional soil investigation

adjacent to and beneath the building footprint to better determine the extent of soil contamination and any associated direct contact exposure risk.

- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and/or petroleum contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

Institutional Control

Since levels of contaminants detected in soil and groundwater on-Site were above applicable R2 residential published levels, IDEM is requiring the Original ERC to be terminated and the Replacement ERC be recorded on the deed for the Site to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restrictions in the enclosed Replacement ERC, which are summarized below:

- Shall not use the Site for residential purposes including childcare and educational facilities.
- Shall not use the Site for any agricultural use.
- Shall neither engage in nor allow drilling or excavation of soil in the “Affected Area” without first submitting a work plan.
 - Shall restore soil disturbed in the “Affected Area” in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment.
 - Any soil removed, excavated or disturbed in the “Affected Area” must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air in any renovations/additions to the existing buildings and/or any newly constructed buildings on Site and/or install, operate and maintain, operate and maintain, a vapor mitigation system within any newly-constructed human-occupied building(s) or renovations/additions to the existing buildings on the Site.
- Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air in the previously sampled locations in the southeastern, northeastern, and west-central buildings through a round of winter “worst case scenario” sampling

and, depending on the results, mitigate any identified contaminant exposures.

- Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air in the northern and southwestern building(s) and/or install, operate and maintain, operate and maintain, a vapor mitigation system within any uninvestigated human-occupied building(s) on the Site.
- Shall not use or allow the extraction of groundwater on the Site for any purpose.
- If Chromium VI-contaminated soil is not removed from the “Affected Area”, install and maintain a 2-foot clean fill barrier or an engineered barrier over the “Affected Area”.

Conclusion

IDEM encourages the continued commercial use of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are

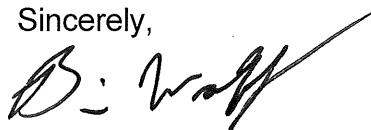
later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under CERCLA. Further, pursuant to Indiana Code (IC) § 13-25-5-1, a prospective purchaser or owner's participation in the Indiana Brownfields Program does not affect applicable closure or corrective action obligations under the Resource Conservation and Recovery Act (RCRA) set forth in 42 U.S.C. 6901, et seq. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use.

In order for IDEM to consider this letter effective, the enclosed ERC termination and replacement ERC which includes a copy of the Comfort Letter, must be recorded on the deed for the Site in the St. Joseph County Recorder's Office. Instructions explaining the process of how to correctly record the ERC are enclosed. Please return a certified copy of the filed documents to Tonya Keller at tokeller@ifa.in.gov or at the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Tonya Keller

The Program is pleased to assist Vested Interest, LLC with this commercial redevelopment project. Should you have any questions or comments, please contact Haley Faulds at (317) 234-0685. She can also be reached via email at: hfaulds1@ifa.in.gov.

Sincerely,



Brian Wolff
Assistant Commissioner
Office of Land Quality

cc: Ashley Green, U.S. EPA Region 5
Meredith Gramelspacher, Indiana Brownfields Program
Haley Faulds, Indiana Brownfields Program
Shay Hartley, IDEM UST Section Chief
James Bennett, Heron Environmental, LLC
Dan Cory, Plews Shadley Racher & Braun, LLP
St. Joseph County Health Department

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this ____ day of _____, 202__, by Vested Interest, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of St. Joseph, Indiana, which is located at 251 East Sample Street in South Bend and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on March 6, 2023, recorded on April 6, 2023 as Deed Record 2023-07151 and revised by Deed of Correction on April 27, 2023, recorded on July 21, 2023 as Deed Record 2023-16473 in the Office of the Recorder of St. Joseph County, Indiana. The Real Estate consists of approximately 2.34 acres and is identified by the State by parcel identification number 71-08-12-377-014.000-026. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances relating to historical operations on or in the vicinity of the Real Estate, Program site number BFD #4230303.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in soil, groundwater and soil gas sample on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are hexavalent chromium in soil and tetrachloroethylene ("PCE") in groundwater and soil gas.

WHEREAS: Soil, groundwater, and soil gas on the Real Estate were sampled for volatile organic compounds ("VOCs"). Additionally, soil and groundwater were analyzed for Resource Conservation and Recovery Act ("RCRA") 8 metals. Investigations detected levels of hexavalent chromium in soil and PCE in groundwater and soil gas samples above applicable published levels established by IDEM in the *Risk-based Closure Guide* ("R2") (July 8, 2022, and applicable revisions). Soil, groundwater, and soil gas analytical results above applicable R2 published levels are summarized on Tables 1, 2, and 3 attached hereto as **Exhibit "D"**. A site map, attached hereto as **Exhibit "E"**, depicts sample locations on the Real Estate at which the COCs were detected above applicable R2 published levels.

WHEREAS: The Department previously approved conditional commercial/industrial closure of environmental conditions on the Real Estate under the *Risk Integrated System*

of Closure for Leaking Underground Storage Tank Incident #199811514. A No Further Action (“NFA”) Determination was issued for Facility Identification Number #7447 on September 18, 2007, for the petroleum contamination detected in soil and groundwater. In conjunction with the NFA letter, an ERC (“Original ERC”) was recorded on July 25, 2007, as Instrument Number 0729157 on the deed for the Real Estate. Since the Original ERC was recorded, additional investigations were conducted at the Real Estate. Sampling and analysis of soil, groundwater and soil gas was completed in 2022 and 2023, the analytical results of which necessitated revisions to the land use restrictions in the Original ERC to mitigate potential exposure to contaminated vapors resulting from subsurface contamination. The Original ERC was recently terminated and the Department has determined that the land use restrictions contained in this Covenant, which is being recorded as a replacement for the Original ERC, will enable the Real Estate to be used safely for conditional commercial and/or industrial use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department’s Virtual File Cabinet on the Web at: <https://www.in.gov/idem/legal/public-records/virtual-file-cabinet/>.

NOW THEREFORE, Vested Interest, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on Vested Interest, LLC and all future owners:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:
 - (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily childcare facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
 - (b) Shall not use the Real Estate for any agricultural use.
 - (c) Shall neither engage in nor allow drilling or excavation of soil on the Real Estate in the “Affected Area” identified via GPS coordinates and depicted on the attached **Exhibit “F”** without first submitting a work plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the “Affected Area” on the Real Estate must be conducted in accordance with a Department-approved work plan, including all applicable requirements of IOSHA/OSHA.
 - i. Soil disturbed as a result of excavation and construction activities in the “Affected Area” on the Real Estate must be restored in such a manner that any remaining contaminant concentrations do not present a threat to

human health or the environment (as determined under the R2 using published levels).

- ii. Any soil that is removed, excavated or disturbed on the Real Estate in the “Affected Area” must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- (d) (i) Shall not occupy any renovations/additions to the existing building(s) and/or any building(s) newly constructed on the Real Estate after the effective date of this Covenant without first completing, one of the following: Option 1) Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air (“vapor intrusion”) in any renovations/additions to existing buildings and/or newly constructed human-occupied building(s) on the Real Estate; or, Option 2) Install, operate and maintain a vapor mitigation system in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and *IDEM Risk-based Closure Guide* (July 8, 2022 and applicable revisions) (“R2”) within any renovations/additions to existing building(s) and/or newly constructed on the Real Estate, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of R2 CIAPLs, based upon commercial/industrial use of the Real Estate or site-specific remediation objectives approved by the Department.
- (ii) if after Department concurrence that the initial evaluation described in (d)(i) above establishes that there is contaminated vapor in indoor air above applicable IDEM R2 CIAPLs based on commercial/industrial use of the Real Estate, then Option 2) listed in (d)(i) above must be implemented or if contaminated vapor in indoor air is determined to be below the applicable IDEM R2 CIAPLs, then, with Department concurrence, a second investigation of the vapor intrusion pathway must be conducted per the IDEM R2 to confirm the results.
- (e) Shall: (i) Option 1) Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air (“vapor intrusion”) at the previously sampled locations in the southeastern, northeastern, and west-central buildings on the Real Estate during a winter “worst case scenario” sampling event; or, Option 2) Install, operate and maintain a vapor mitigation system in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and the R2 within the existing southeastern, northeastern, and west-central buildings on the Real Estate, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of R2 CIAPLs, based upon commercial/industrial use of the Real Estate or site-specific remediation objectives approved by the Department.

(ii) if after Department concurrence that the winter “worst case scenario” evaluation described in (e)(i) above determines that there is contaminated vapor in indoor air above applicable IDEM R2 CIAPLs based on commercial/industrial use of the Real Estate, then Option 2) listed in (e)(i) above must be implemented in the existing southeastern, northeastern, and/or west-central buildings building or if contaminated vapor in indoor air is determined to be below the applicable IDEM R2 CIAPLs, then, with Department concurrence, a second investigation of the vapor intrusion pathway must be conducted per the IDEM R2 to confirm the results.

- (f) (i) Shall: Option 1) Evaluate and determine through a Program-approved sampling plan, the presence or absence of the intrusion of contaminated vapor into indoor air (“vapor intrusion”) in the existing northern and southwestern building(s) on the Real Estate; or, Option 2) Install, operate and maintain a vapor mitigation system in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and IDEM R2 in the existing northern and southwestern building(s), unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of R2 CIAPLs, based upon commercial/industrial use of the Real Estate or site-specific remediation objectives approved by the Department.

(ii) if after Department concurrence that the initial evaluation described in (f)(i) above determines that there is contaminated vapor in indoor air above applicable IDEM R2 CIAPLs based on the commercial/industrial use of the Real Estate, then Option 2) listed in (f)(i) above must be implemented or if contaminated vapor in indoor air is determined to be below the applicable IDEM R2 CIAPLs, then, with Department concurrence, a second investigation of the vapor intrusion pathway must be conducted per the IDEM R2 to confirm the results.

- (g) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.
- (h) If hexavalent chromium contaminated soil is not removed from the “Affected Area” depicted on the attached **Exhibit “F”**, install a 2-foot clean (constituents not exceeding R2 residential published levels) soil and vegetative barrier in areas not covered by buildings, parking lots, or sidewalks and maintain their integrity. Buildings, parking lots, sidewalks, and soil capped areas will serve as protective barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair without replacement by a barrier that will provide equal or better

protection, unless it can be demonstrated to IDEM that the underlying contaminated soil has been remediated to R2 published levels.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the

Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of St. Joseph County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable

laws.

13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
Vested Interest, LLC
251 East Sample Street
South Bend, Indiana 46601
ATTN: Jacob Titus

To Department:
Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Haley Faulds

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

ACKNOWLEDGMENT BY A NOTARY

IN WITNESS WHEREOF, Vested Interest, LLC, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this _____ day of _____, 20____.

Vested Interest, LLC

Printed Name of Signatory

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, the _____ of the Owner, _____, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this ____ day of _____, 20____.

_____, Notary Public
Residing in _____ County, _____

My Commission Expires:

This instrument prepared by:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

(Printed Name of Declarant)

EXHIBIT A

Deed of Correction for the Real Estate

No SD Required AA
No SD Required BL

018-3024-0883

Transfer ~~XXXX~~
Taxing Unit ~~South Bend~~
Date ~~08/08/2023~~

2023-16473
RECORDED AS PRESENTED ON
07/21/2023 11:01 AM
MARY BETH WISNIEWSKI
ST. JOSEPH COUNTY
RECORDER
PGS: 3 FEES: 25.00

~~2023-10109~~
~~RECORDED AS PRESENTED ON~~
~~05/10/2023 09:08 AM~~
~~XXXXXXXXXXXX~~
MARY BETH WISNIEWSKI
ST. JOSEPH COUNTY
RECORDER
PGS: 3 FEES: 25.00

Transfer 67770
Taxing Unit South Bend
Date 07/21/2023

****Re-record to correct an error in the legal description.****

Mail Deed to:
Vested Interest LLC
251 East Sample St.
South Bend, IN 46614

Mail Tax Bills to:
SAME

Auditor's record
Taxing No. _____
Taxing Unit _____
Date _____

DEED OF CORRECTION

ZIKER SAMPLE STREET LLC, an Indiana Limited Liability Company
11352 E Northridge Street, Mesa, AZ, 85207
the Grantor

Conveys and warrants to

VESTED INTEREST LLC., an Indiana Limited Liability Company,
251 East Sample St., South Bend, IN, 46601
the Grantee

for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, Real Estate in St. Joseph County, in the State of Indiana, described as follows:

LNC SEE ATTACHED EXHIBIT "A"

Parcel State ID: 71-08-12-377-014.000-026
Common address: 251 East Sample St., South Bend, IN, 46601

The undersigned person executing this deed on behalf of the Limited Liability Company represents and certifies that he is the current manager of said Limited Liability Company and has been duly empowered by a proper meeting and vote of the Limited Liability Company members to execute and deliver this deed.

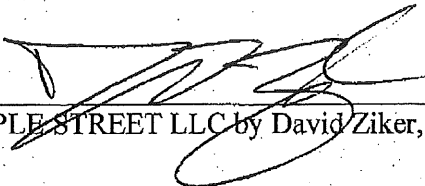
NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED JULY 18, 2007, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY ON JULY 25, 2007, INSTRUMENT NUMBER 0729157 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

MH

DULY ENTERED FOR TAXATION
ST. JOSEPH CO. INDIANA
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

The purpose of this deed is to correct a certain Warranty Deed from Grantor to Grantee dated March 6, 2023, recorded April 6, 2023 as Instrument No. 2023-07151 in the Recorder's Office of St. Joseph County, Indiana by adding the clause immediately above regarding the Environmental Restrictive Covenant dated July 25, 2007.

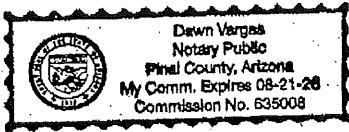
Signed and dated on 27th Day of April 2023.

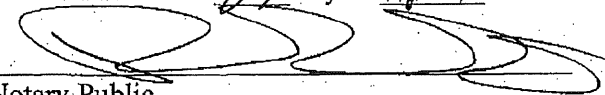


ZIKER SAMPLE STREET LLC by David Ziker, Manager

STATE OF Arizona)
Pinal COUNTY) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Ziker Sample Street LLC, first being duly sworn, and acknowledged the execution of the foregoing deed and who, being duly sworn, stated that the representations therein are true on the 27th day of April 2023.





Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

/s/ David L. Mirkin

David L. Mirkin

This instrument was prepared by David L. Mirkin, (#10258-22), Mirkin Law Offices, P.C., 205 West Jefferson Blvd., Ste. 511, South Bend, Indiana 46601, (574) 232-1000, dmirkin@mirkinlaw.com.

EXHIBIT "A"

PARCEL I: Lots Numbered One (1), Two (2) and Three (3) as shown on the recorded Plat of John C. Knoblock's Subdivision of Out Lot Numbered 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana.

EXCEPTING: A part of Lot Two (2) as shown on the plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston & Felloiv's Addition to the Town, noiv City of South Bend, recorded in Plat Book 9, Page 69 (all referended documents are recorded in the Office of the Redorder of St. Joseph County), being a part of the Southwest quarter of Sedtion 12, Toivnship 37 North, Range 2 East, St. Joseph County, Indiana, and being that part of the grantors' land described in Instrument 1725669, lying ivithin the right-of-way lines depicted on the Right-Of-Way Parcel Plat, more particularly described as follows: Beginning at the southeast corner of said Lot 2; thence South 89 degrees 46 minutes 16 seconds West (bearings based on the Location Control Route Survey Plat for this project, recorded as Instrument Number 2020-00392) 15.99 feet along the south line of said Lot to the point designated as "9000" on said parcel plat; thence North 0 degrees 42 minutes 23 seconds West 25.99 feet to the point designated as "9001" on said parcel plat; thence North 89 degrees 17 minutes 37 second East 15.96 feet to the east line of said Lot, designated as point "9002" on said parcel plat; thence South 0 degrees 44 minutes 3 seconds East 25.74 feet along the east line of said Lot to the point of beginning and containing 412 square feet, more or less.

PARCEL II: Lot Numbered Four (4) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana.

PARCEL III: Lots Numbered Seven (7), Eight (8), Nine (9) and Ten (10) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana and the North Half of Lots Numbered Thirty-seven (37) and Thirty-eight (38) of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, Indiana.

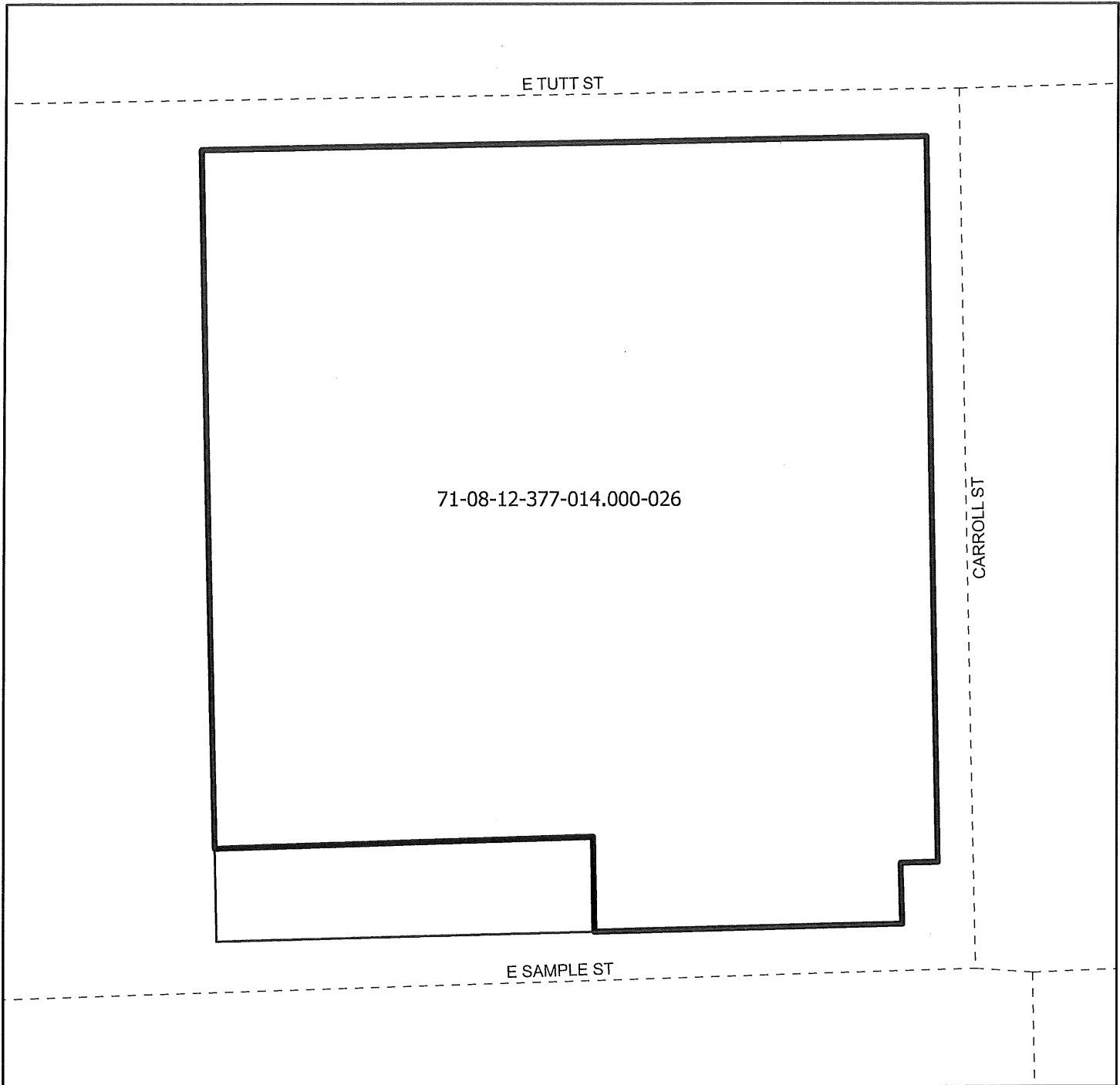
PARCEL IV: Lots Numbered Five (5) and Six (6) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 and the East Half of the South Half of Lot Numbered Thirty-eight (38) as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, St. Joseph County, Indiana. Also, a lot or parcel 31.4 feet in ividth, East and West, taken off of and from the East side of the West Half of the South Half of Lot Numbered 39 as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, St. Joseph County, Indiana.

PARCEL V: The South Half of Lot Numbered Thirty-seven (37) as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, excepting therefrom 40 feet North and South and 130 feet East and West taken off of the South end thereof. ALSO, a strip of land 33 feet East and West by 125 feet North and South taken off of and from the entire North end of a parcel of land described as the West Half of the West Half of the South Half of Lot Numbered Thirty-eight (38) as shown on the recorded Plat of Denniston & Felloiv's Addition to then Town, noiv City of South Bend.

EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program Number 4230303 - Real Estate



Mapped By: Vickey Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, July 31, 2023



Real Estate: Deed of Correction – Instrument Number 2023-16473
Recorded 7/21/2023

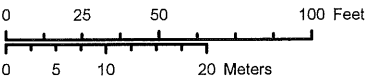
Parcel Info: The Real Estate consists of Parcel Identification Number:
Portion of 71-08-12-377-014.000-026

PLSS Info: Section 12, T37N, R2E, Portage Township, St. Joseph County, Indiana

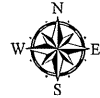
Property Info: 251 East Sample Street, South Bend, Indiana

Disclaimer: This Map is intended to serve as an aid in graphic representation only.
This information is not warranted for accuracy or other purpose.

 PARCEL
 REAL ESTATE
 - - - STREET



St. Joseph County



Project Area

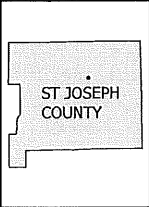


EXHIBIT C

Copy of the Comfort Letter

EXHIBIT D

TABLE 1
Ziker Cleaners, South Bend – BFD #4230303
May 2023 Soil Concentrations Exceeding Applicable
IDEM R2 Published Levels

TABLE 2
Ziker Cleaners, South Bend – BFD #4230303
May 2023 Groundwater Concentrations Exceeding
IDEM R2 Published Levels

TABLE 3
Ziker Cleaners, South Bend – BFD #4230303
Subslab Soil Gas Concentrations
Exceeding Applicable IDEM R2 Published Levels

TABLE 1
Ziker Cleaners, South Bend – BFD #4230303
May 2023 Soil Concentrations Exceeding Applicable
IDEM R2 Published Levels

Contaminant Detected	Sample Location	Depth feet bgs	Results ppm	RSPL	CSPL	XSPL
Hexavalent Chromium	B-2	8-10	99	4	60	3000

Notes: **bold** = above R2 Residential Soil Published Level
italics = above R2 Commercial Soil Published Level
 ppm = parts per million
 bgs = below ground surface

TABLE 2
Ziker Cleaners, South Bend – BFD #4230303
May 2023 Groundwater Concentrations Exceeding
IDEM R2 Published Levels

Contaminant Detected	Sample Location	Results ppb	GWPL
Tetrachloroethylene	B-1	13	5
	B-2	5.9	
	B-3	9.4	
	B-4	12	

Notes: **bold** = above R2 Groundwater Published Level
 ppb = parts per billion

TABLE 3
Ziker Cleaners, South Bend – BFD #4230303
Subslab Soil Gas Concentrations
Exceeding Applicable IDEM R2 Published Levels

Contaminant Detected	Sample ID	Sample Date	Results ug/m ³	RSSPL	CSSPL	LCSSPL
Tetrachloroethylene	SG-4	6/23/22	1,600	1,000	6,000	60,000
		4/11/23	1,600			
		9/20/23	1,000			
	SG-5	6/23/22	1,200			
	SG-11	6/23/22	7,100			
		4/11/23	4,400			
		9/20/23	4,800			
	SG-12	6/23/22	2,800			
		9/20/23	3,700			
	SG-12 Dup	4/11/23	1,900			

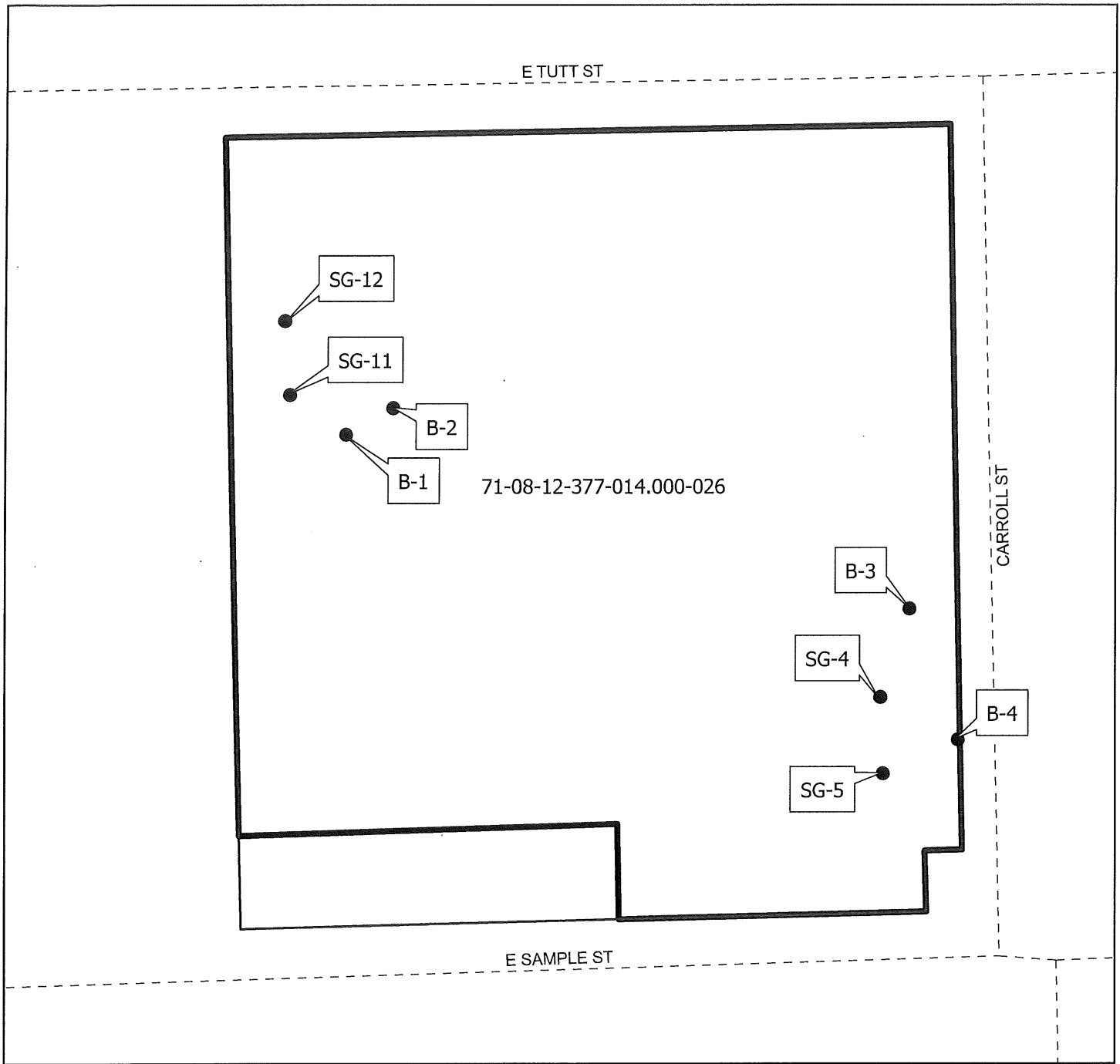
Notes: **bold** = above R2 Residential Subslab Published Level
italics = above R2 Commercial Subslab Published Level
 Dup = duplicate
 ug/m³ = micrograms per cubic meter

EXHIBIT E

Ziker Cleaners, South Bend – BFD #4230303
Site Map Depicting Sampling Locations at Which
COCs Were Detected Above Applicable IDEM R2 Published Levels

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.

BFD 4230303 - Site Map Depicting Sample Location Where COCs Were Detected Above Applicable IDEM Risk-Based Closure Guide (R2) Published Levels



Mapped By: Vickey Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, February 06, 2024

Real Estate: Deed of Correction – Instrument Number 2023-16473
Recorded 7/21/2023

Parcel Info: The Real Estate consists of Parcel Identification Number:
Portion of 71-08-12-377-014.000-026

Sample Info: Sample Locations based on "Figure 2 – Property Detail" and "Figure 3 – Soil Boring Locations" from the Site Investigation Report by Heron Environmental LLC, dated December 11, 2023

PLSS Info: Section 12, T37N, R2E, Portage Township, St. Joseph County, Indiana

Property Info: 251 East Sample Street, South Bend, Indiana

Disclaimer: This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.

PARCEL	SAMPLE LOCATION
REAL ESTATE	STREET

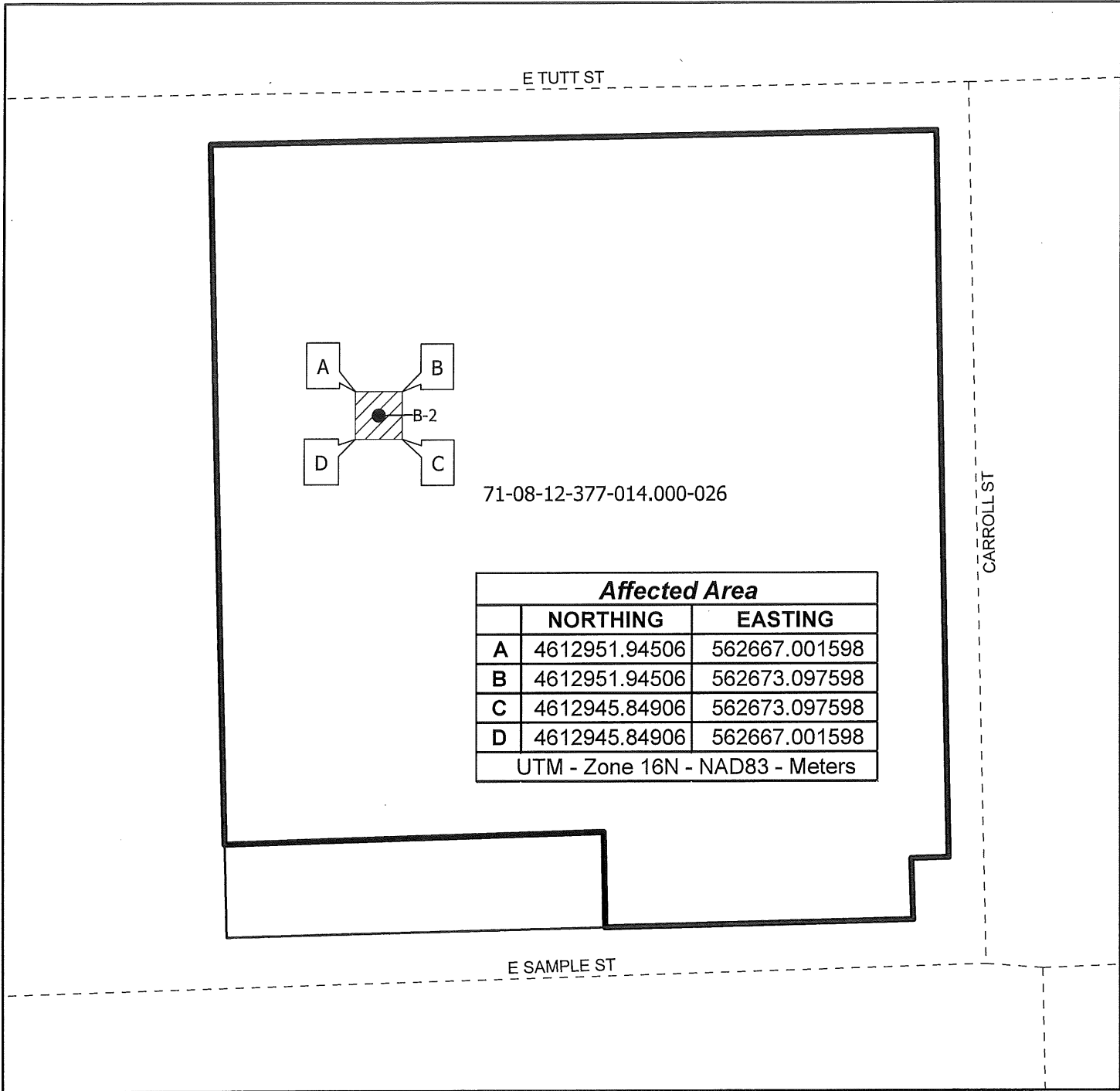
St. Joseph County

Project Area

EXHIBIT F

Ziker Cleaners, South Bend – BFD #4230303
Site Map Depicting “Affected Area”

Indiana Brownfields Program Number 4230303 - Affected Area



Mapped By: Vickey Robinson, GIS & Digital Services Specialist, Indiana Brownfields Program, February 06, 2024

Real Estate: Deed of Correction – Instrument Number 2023-16473
Recorded 7/21/2023

Parcel Info: The Real Estate consists of Parcel Identification Number:
Portion of 71-08-12-377-014.000-026

Sample Info: Sample Location based on "Figure 3 – Soil Boring Locations" from the Site Investigation Report by Heron Environmental LLC, dated 12/11/23

Affected Area: Affected Area coordinate: UTM – Zone 16N – NAD83 – Meters

PLSS Info: Section 12, T37N, R2E, Portage Township, St. Joseph County, Indiana

Property Info: 251 East Sample Street, South Bend, Indiana

Disclaimer: This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.

- SAMPLE LOCATION
- AFFECTED AREA
- PARCEL
- STREET
- REAL ESTATE

St. Joseph County

Project Area

Cross Reference: Instrument Nos. 0729157, 2023-07151, 2023-16473

TERMINATION OF ENVIRONMENTAL RESTRICTIVE COVENANT

THIS TERMINATION of Environmental Restrictive Covenant (“ERC”) is made this _____ day of _____, 20____, by Vested Interest, LLC (“Owner”) with the approval of the Indiana Department of Environmental Management (“IDEM”).

I. Recitals

A. Owner is the fee owner of certain real estate in the County of St. Joseph County, Indiana, which is located at 251 East Sample Street in South Bend and is more particularly described in the attached legal description designated as “**Exhibit A**” (the “Real Estate”). The Real Estate was acquired by deed on March 6, 2023, which was recorded on April 6, 2023 as Deed Record 2023-07151 and revised by Deed of Correction on April 27, 2023, recorded on July 21, 2023 as Deed Record 2023-16473 in the Office of the Recorder of St. Joseph County, Indiana. The Real Estate consists of approximately 2.34 acres and is identified by parcel identification number 71-08-12-377-014.000-026;

B. The Real Estate is subject to an ERC (“Original ERC”) recorded on July 25, 2007, as Instrument Number 0729157. The Original ERC established certain restrictions and/or obligations on the Real Estate and its future use to ensure the protection of public health, safety or welfare and the environment due to a release of hazardous substances and petroleum contamination relating to the historical operations on the Real Estate, IDEM Leaking Underground Storage Tank (“LUST”) incident #199811514;

C. Paragraph 11 of the Original ERC provides that, if any owner desires to terminate the Original ERC, the person shall obtain IDEM’s prior written approval.

D. Since the Original ERC was recorded, additional investigations were conducted at the Real Estate. Sampling and analysis of soil, groundwater and soil gas was completed in 2022 and 2023 for volatile organic compounds (“VOCs”) and/or Resource Conservation and Recovery Act (“RCRA”) 8 metals, the analytical results of which necessitate revisions to the existing land use restrictions to mitigate potential exposure to contaminated vapors resulting from subsurface contamination to ensure the safety of human health.

E. Therefore, to best outline the land use restrictions appropriate for current environmental conditions on the Real Estate, IDEM and the Owner concur that the Original ERC should be terminated and a replacement ERC (“Replacement ERC”) should be recorded on the deed for the Real Estate.

II. Termination of Original ERC

- A. Owner desires to terminate the Original ERC described in Section I, Paragraph B of this instrument.
- B. After approval and signature by IDEM, Owner shall record this Termination of ERC with the Office of the Recorder of St. Joseph County and provide a copy to IDEM within 30 days of recording.
- C. This Termination of ERC is effective when signed by the parties.

III. Approval

Pursuant to the terms of Paragraph 11 of the Original ERC, IDEM has reviewed and approves the Termination of ERC.

IV. Authorization

The undersigned persons executing this Termination of ERC on behalf of Owner and IDEM represent and certify that they are empowered and duly authorized by their respective entities to execute this document. The undersigned person on behalf of the Owner further represents and certifies that Owner is the current owner of the Real Estate. Owner hereby attests to the accuracy of the statements in this document and all attachments.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

This Termination of ERC is approved this _____ day of _____, 20____, by IDEM.

By: Andrea Robertson Habeck

Printed: Andrea Robertson Habeck

Title: Technical Staff Coordinator

ACKNOWLEDGMENT BY A NOTARY FOR IDEM

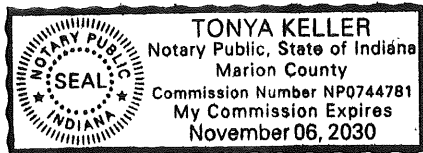
STATE OF Indiana)

) SS:

COUNTY OF Marion)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Andrea Robertson Habeck, of the Indiana Department of Environmental Management, Technical Staff Coordinator who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 18th day of June, 2024.



Tonya Keller
Tonya Keller, Notary Public
Residing in Marion County, IN

My Commission Expires:
November 6, 2030

This instrument prepared by:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

(Printed Name of Declarant)

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT "A"

PARCEL I: Lots Numbered One (1), Two (2) and Three (3) as shown on the recorded Plat of John C. Knoblock's Subdivision of Out Lot Numbered 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana.

EXCEPTING: A part of Lot Two (2) as shown on the plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston & Felloiv's Addition to the Town, noiv City of South Bend, recorded in Plat Book 9, Page 69 (all referended documents are recorded in the Office of the Redorder of St. Joseph County), being a part of the Southwest quarter of Sedtion 12, Toivnship 37 North, Range 2 East, St. Joseph County, Indiana, and being that part of the grantors' land described in Instrument 1725669, lying ivithin the right-of-way lines depicted on the Right-Of-Way Parcel Plat, more particularly described as folloivs: Beginning at the southeast corner of said Lot 2; thence South 89 degrees 46 minutes 16 seconds West (bearings based on the Lodation Control Route Survey Plat for this project, recorded as Instrument Number 2020-00392) 15.99 feet along the south line of said Lot to the point designated as "9000" on said parcel plat; thence North 0 degrees 42 minutes 23 seconds West 25.99 feet to the point designated as "9001" on said parcel plat; thence North 89 degrees 17 minutes 37 second East 15.96 feet to the east line of said Lot, designated as point "9002" on said parcel plat; thence South 0 degrees 44 minutes 3 seconds East 25.74 feet along the east line of said Lot to the point of beginning and containing 412 square feet, more or less.

PARCEL II: Lot Numbered Four (4) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana.

PARCEL III: Lots Numbered Seven (7), Eight (8), Nine (9) and Ten (10) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 in the Office of the Redorder of St. Joseph County, Indiana and the North Half of Lots Numbered Thirty-seven (37) and Thirty-eight (38) of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, Indiana.

PARCEL IV: Lots Numbered Five (5) and Six (6) as shown on the recorded Plat of J.C. Knoblock's Subdivision of Lot 39 in Denniston and Felloiv's Addition to the Town, noiv City of South Bend, recorded nasy 29, 1902 in Plat Book 9, page 69 and the East Half of the South Half of Lot Numbered Thirty-eight (38) as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, St. Joseph County, Indiana. Also, a lot or parcel 31.4 feet in ividth, East and West, taken off of and from the East side of the West Half of the South Half of Lot Numbered 39 as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, St. Joseph County, Indiana.

PARCEL V: The South Half of Lot Numbered Thirty-seven (37) as shown on the recorded Plat of Denniston and Felloiv's Addition to the Town, noiv City of South Bend, exdepting therefrom 40 feet North and South and 130 feet East and West taken off of the South end thereof. ALSO, a strip of land 33 feet East and West by 125 feet North and South taken off of and from the entire North end of a parcel of land described as the West Half of the West Half of the South Half of Lot Numbered Thirty-eight (38) as shown on the recorded Plat of Denniston & Felloiv's Addition to then Town, noiv City of South Bend.